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No. 09-552

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOHN LAWTON LEDINGHAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The following questions are presented by the Petition for Writ of Certiorari:

1. WHETHER THE GOVERNMENT'S FAILURE TO DISCLOSE EXCULPATORY EVIDENCE VIOLATED LEDINGHAM'S DUE PROCESS RIGHTS?

2. WHETHER THE COURT ERRED IN ALLOWING LEDINGHAM'S WIFE TO TESTIFY AFTER LEDINGHAM HAD ASSERTED TESTIMONIAL PRIVILEGE UNDER § 19.2-271.2 OF THE CODE OF VIRGINIA, 1950, AS AMENDED, AND FEDERAL RULE 501?

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PETITION FOR WRIT OF CERTIORARI

John Lawton Ledingham respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case, reproduced in the Appendix at Page 7, herein.

OPINIONS BELOW

On May 9, 2007 Ledingham asserted testimonial privilege under § 19.2-271.2 of the Code of Virginia, 1950, as amended and Rule 501 of the Federal Rules of Evidence. The trial court allowed the government to call Ledingham's wife as a witness over Ledingham's objection.

Ledingham moved for judgment of acquittal on the grounds that the Government had committed a Brady violation which consisted of evidence that not only impeached his wife's testimony but also tended to show he did not own the firearms forming the basis of the charges against him and that reloading equipment and gun powder did not meet the definition of "ammunition." The trial court denied the motion.

On July 2, 2007, Ledingham filed a Motion for Acquittal on the grounds that the government had committed a Brady violation. The trial court denied the motion.

On September 12, 2007, Ledingham renewed his complaint that the government had committed a Brady violation. The trial court denied the motion

and entered judgment on the jury verdict against Ledingham for possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g). reproduced in the Appendix, herein, at Appendix Page 17.

Subsequent to his conviction, Ledingham appealed his conviction to the United States Court of Appeals for the Fourth Circuit. During the pendency of his appeal, the government filed a motion, which Ledingham joined, to remand the case to the district court for further proceedings on Ledingham's Motion for Judgment of Acquittal alleging Brady violations. The United States Court of Appeals for the Fourth Circuit, Case No. 07-4928 granted the motion and remanded the case to the United States District Court for the Western District of Virginia, Case Number 6:07-cr-00007 for the limited purpose of further proceedings regarding Ledingham's Motion for Judgment of Acquittal. The order remanding the case is reproduced in the Appendix, herein, at Appendix Page 8.

On October 7, 2008, the district court heard evidence and arguments by counsel. On October 17, 2008, the trial court issued a written Memorandum Opinion and Order affirming its earlier ruling denying Ledingham's Motion for Judgment of Acquittal, reproduced in the Appendix, herein, at Appendix Page 10.

On August 7, 2009, the Untied States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court in an unpublished decision, United States of America v. John Lawton

Ledingham, Case No. 07-4928, reproduced in the Appendix, herein, at Appendix Page 1.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 and the Fifth and Fourteenth Amendments (U.S. CONST. amend. V and amend. XIV) of the United States Constitution.

The judgment of the United States District Court, Western District of Virginia was entered September 12, 2007 and a timely petition for appeal to the United States Court of Appeals for the Fourth Circuit was denied August 7, 2009.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES OF COURT INVOLVED

AMENDMENT V (U.S. CONST. amend. V):

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or

> property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV, Section 1 (U.S. CONST. amend. XIV):

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. § 922

> (g) shall be unlawful for any person –
>
> (1) who has been convicted in any court of, a crime punish able by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924 - Penalties

> (a) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever –
>
> (D) willfully violates any other provision of this chapter, shall be fined under this title, imprisoned not more than five years, or both.
>
> (2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

§ 19.2-271.2, Code of Virginia, 1950, as amended - Testimony of husband and wife in criminal cases

> In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with

forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.

Except in the prosecution for a criminal offense as set forth in (i), (ii) or (iii) above, in any criminal proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between his spouse and him during their marriage, regardless of whether he is married to that spouse at the time he objects to disclosure. For the purposes of this section, "confidential communication" means a communication made privately by a person to his spouse that is not

intended for disclosure to any other person.

Federal Rules of Criminal Procedure, Rule Number 16. Discovery and Inspection

16(a)(1)(E) Documents and Objects. Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these item, if the item is within the government's possession, custody or control and:

(i) the item is material to preparing the defense;

(ii) the government intends to use the item in its case-in-chief at trial; or

(iii) the item was obtained from or belongs to the defendant.

16(c) Continuing Duty to Disclose. A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

(1) the evidence or material is subject to discovery or inspection under this rule; and

(2) the other party previously requested, or the court ordered, its production.

Federal Rules of Evidence, Rule Number 501. General Rule

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

STATEMENT OF THE CASE

A. The Parties

Petitioner is John Lawton Ledingham.

Respondent is the United States of America.

B. The Action Below

1. The Indictment

Ledingham was the subject of a seven-count indictment filed against him on February 15, 2007. On May 9, 2007, the Government moved to dismiss Counts One through Five of the indictment and to proceed on Counts Six and Seven. Counts Six and Seven, respectively, charged that on March 10, 2006, Ledingham possessed a firearm after having been convicted of a felony in violation of 18 U.S.C. § 922(g)(1) and possessed ammunition after having been convicted of a felony in violation of 18 U.S.C. § 922(g)(1).

2. The Trial

On May 9, 2007, Ledingham asserted testimonial privilege under § 19.2-271.2 of the Code of Virginia, 1950, as amended and Federal Rule of Evidence 501 to prevent Ledingham's wife from testifying against him. The Court allowed the case to proceed with Ledingham's wife's testimony. When the government called Rebecca Ledingham,

Ledingham's wife, to testify, Ledingham noted his objection with the Court.

At the conclusion of the government's evidence, Ledingham moved for judgment of acquittal on two grounds: First that a statement his wife had executed under oath asserting that the firearms were hers constituted reasonable doubt. Ledingham also asserted that the government had committed a Brady violation by failing to disclose and produce a "seized asset claim form" she had executed under oath in claiming that the firearms were hers. Second, that neither reloading equipment or gun powder meet the definition of "ammunition." The court held that ownership has nothing to do with possession and that "ammunition" means propellant powder designed for use in any firearm.

At the conclusion of all the evidence, Ledingham renewed his motion regarding marital privilege. The trial court overruled the motion.

The jury returned a guilty verdict on Counts Six and Seven of the indictment, and the Court entered judgment on the verdict.

At the sentencing proceedings on September 11, 2007, Ledingham renewed His complaint that the government had committed a Brady violation by not producing the "seized asset claim form" executed by Ledingham's wife on the grounds that it was exculpatory evidence.

The Court, after giving consideration to the factors listed in 18 U.S.C. § 355(a) and the advisory guidelines, sentenced Ledingham to prison for twenty-one months on each count, to be served concurrently and to be on supervised release for two years. The Court also made a special assessment against Ledingham and ordered that he pay a fine on each count.

Ledingham filed a post-trial Motion for Acquittal on July 2, 2007 with regard to his claim that the government had committed a Brady violation by failing in its duty to inform him of "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment, irrespective of the" good or bad faith of the prosecution. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Ledingham averred that Rebecca Ledingham had filed a form with the Bureau of Alcohol, Tobacco and firearms claiming, under oath, that the firearms were hers. The government failed to disclose, prior to trial, that Rebecca Ledingham had made a legal claim to the subject weapons, nor did the government produce the executed form whish was in its possession. The trial court denied the motion.

On remand from the United States Court of Appeals on joint petition to determine Ledingham's Motion for Acquittal, Ledingham argued that the claim form executed by Rebecca Ledingham which had not been shown to the grand jury or introduced into evidence at trial contained exculpatory information and also information which impeached

Rebecca Ledingham's grand jury testimony and her testimony at trial.

3. The Appeal

The decision of the Court of Appeals that the nondisclosure of Brady material in this case did not undermine the outcome of the trial is in error. In the "Treatment of *Brady v. Maryland* Material in United States District and State Courts' Rules, Orders, and Policies," Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, "Treatment of *Brady v.* Maryland Material in United States District and State Courts' Rules, Orders and Policies," Laural L. Hooper, *et al.* Federal Judicial Center, October, 2004, it is noted that the governing rules and policies for treatment of Brady material varies among the district courts. It is noted that a comprehensive review of all practices regarding Brady is beyond the level of resources available for the report. No specific remedies for prosecutorial nondisclosure are cited in any district; however, sanctions, including exclusion of evidence, a finding of contempt, the granting of a continuance and even the dismissal of an indictment could apply.

It is the contention of the defendant that more well-defined remedies need to be set forth by this Court to provide uniformity in the lower courts for failures to disclose Brady material.

Ledingham further asks the Court to revisit the marital privilege argument since a finding that the wife should not have been allowed to testify

would make the Brady argument moot. Specifically, this case is a clear illustration of the need for a new trial where all evidence could be presented in those cases where the failure to produce Brady material resulted in a trial which did not include the presentation of all exculpatory evidence.

STATEMENT OF FACTS

Virginia State Police Special Agent Keith Kincaid stated that he had received information in 2006 that Ledingham, a convicted felon, had guns on his property. On the basis of that information, Kincaid applied for and executed a search warrant at Ledingham's residence at 223 Kimberlea Road, Madison Heights, Virginia on March 10, 2006. Kincaid was the case agent who photographed, collected, and stored the evidence found during the search of Ledingham's residence.

Ledingham and a neighbor named Susan Chapman were present during the search. Ledingham was cooperative and answered Kincaid's questions. Ledingham told Kincaid he had no idea why anyone would give information that would lead the authorities to his home. In response to Kincaid's question as to whether firearms were on the property, Ledingham told him that his wife's .22 pistol was in the house and that there were reloading supplies belonging to someone else on the property. Ledingham told Kincaid everything was under lock and key and showed Kincaid where the items were located.

Kincaid found a locked gun cabinet in the closet of the foyer of the house. He said Ledingham told him how to unlock it with a fingernail file. Kincaid stated that ammunition as well as a barrel and a receiver of a shotgun were found in this locked gun cabinet in the closet in the foyer of the house. The ammunition did not fit either the rifle or the pistol. Inside a small cabinet affixed to the wall above a coat rack was a .22 caliber semi-automatic pistol with a loaded magazine, an older, rusty .22 caliber single shot rifle with a broken stock and a gas-operated pellet rifle.

In a two-story outbuilding which was occupied by tenants in an upstairs apartment and a lower floor used as a machine shop, Kincaid found a small cylindrical container of .25 caliber cartridges, some of which were oxidized, in a desk drawer. Kincaid could not recall if the desk was locked. A reloading press used to make bullets was on a table in the shop. A pellet rifle, not classified as a firearm under the federal statute, was hanging on a wall.

A padlocked cabinet was also in the shop. The officers removed the padlock with bolt cutters and found press equipment and a container of pellets for the pellet rifle. Kincaid stated that possession of the pellets is not a violation of federal law. A triple balance beam, safety powder scale, reloading equipment, gun cleaning items and a container of smokeless pistol powder also were in the padlocked cabinet. The officers did not find any actual bullets that were made on a press or any reloaded ammunition in the cabinet.

Kincaid stated that he found a magazine published by Lee and addressed to Ledingham in the kitchen of the residence. The magazine was for ammunition reloading equipment, but Kincaid had no documentation that any deliveries were made to Ledingham.

Kincaid stated that Ledingham's wife called him several days after the search of the residence and told Kincaid that the guns belonged to her. Kincaid stated that he had information that Ledingham and his wife were divorcing and that she had moved out of the residence at the time the search warrant was executed.

Frank James Wills stated that he is a fire-arms enthusiast, works booths at gun shows and has been interviewed about guns for the History Channel. He and Ledingham are neighbors and have been life-long friends. He stated that after Ledingham's residence was searched, he called Kincaid to tell him that the reloading equipment was his and not Ledingham's. He informed Kincaid that he kept the equipment in Ledingham's outbuilding. Wills, at first, stated that Ledingham asked him to claim the equipment as his own. Then, Wills clarified that statement by saying that because Wills used the reloading equipment at Ledingham's outbuilding, Ledingham wanted Wills to buy the reloading equipment. Wills stated that the gunpowder found in the building was his and was kept locked up. Wills stated he never saw Ledingham use the re-loader. Wills also stated that Ledingham's wife sold him an old Mauser army rifle in 2005.

After eight years of marriage, Ledingham and his wife separated on February 12, 2006. Most of their married life was spent at 225 Kimberlea Road. She stated that Ledingham had told her he was a convicted felon and could not have guns and that any guns in the house would have to be hers. She stated that Ledingham acquired three guns: a .22 rifle, a .22 pistol and a 12-gauge shotgun which she and he used for target practice. When their child was born, she asked Ledingham to get a gun cabinet. Ledingham gave her the gun cabinet as a Christmas present.

Rebecca Ledingham stated that a friend told her that a warrant had been executed at their marital home, and Ledingham phoned her the next day to ask to meet with her at the residence. She stated that he told her she should claim the seized guns as her own. She called Officer Kincaid and claimed the items were hers. She also spoke with Special Agent Davidson and told him the guns were family heirlooms and she wanted them back.

Rebecca Ledingham stated that she drew up a "bill of sale" at Ledingham's insistence that she had sold one of the guns (a Mauser) to Jimmy Wills on October 20, 2005. She said she also prepared other receipts, including a list of items she sold to Herbie Goldthorpe at Ledingham's insistence.

Rebecca Ledingham stated that she and Ledingham met with an attorney in April or May, 2006 at which time she signed, under penalty of perjury, a property claim form for the seized firearms. Special Agent Davidson stated that no

seized asset claim form had been sent to him because a separate division within his agency handles the claims.

Rebecca Ledingham stated that the seized ammunition was given to Ledingham by Yolanda, a friend. Yolanda's father, a gun dealer, had passed away, and Yolanda was getting rid of items she did not want. Rebecca Ledingham sold the gun cabinet to Yolanda for $150 subsequent to the events leading up to Ledingham's arrest.

Special Agent Davidson documented the items seized by Officer Kincaid during the search: a .22 Colt, semi-automatic pistol; a .22 single shot rifle, and a 12-gauge shotgun barrel and receiver, a number of boxes of ammunition. Davidson stated that every bit of the .22 ammunition could be used in either the rifle or the pistol. He stated he had test-fired them, and both were operational.

Davidson stated that when the officers found the ammunition, all of it was locked up. Davidson did not know how long the ammunition had been in its location or who put it there. He stated that over time bullets oxidize.

John Ledingham stated that all of the items the officers seized from the closet were locked up, and the items seized from the outbuilding were chained and padlocked.

Ledingham stated that the weapons in question came from his wife's grandmother's house in the summer of 2005 and were stored in the house

by his wife. He did not personally handle them. He insisted that his wife keep them under lock and key because he knew he could not have them.

Ledingham stated that it was not his intention to possess firearms or black powder. He stated that after his uncle died, his family asked him to sell his uncle's reloading equipment. Because James Wills used the reloading equipment in Ledingham's outbuilding and brought his own materials, including gun powder, for his project, Ledingham wanted him to buy the reloader. Ledingham stated that all items seized from the outbuilding, save the reloader, belonged to James Wills.

Ledingham stated that his wife changed her story and denied her ownership and exclusive possession of the guns when his wife started to argue with him on issues related to their divorce a few months after she executed the BATF form.

Ledingham denied that he had asked his wife to claim the guns were hers. He stated that Yolanda Pash had given some 752 ammunition to Rebecca Ledingham, and Rebecca stored it. Ledingham claimed that Rebecca Ledingham had received the .22 pistol from her grandmother. Ledingham stated that Rebecca knew he could not have firearms because he had been convicted on a felony marijuana charge.

Ledingham admitted to having convictions involving marijuana and cocaine and a conviction for possession of a stolen mini-bike. Yolanda Pash, a

friend of the Ledinghams, stated that she had been told that Ledingham's friend Jimmy Wills was going to a gun show. Pash's parents had died and her father had been a gun collector and dealer. In 2004 or 2005, Pash brought a box of ammunition and various other gun-related items to the Ledingham residence to give to Wills to sell for her. Pash stated that Ledingham was not at home, and she gave the box to Becky to give to Wills. When it turned out that Wills was unable to sell it, Pash told Becky to tell Wills he could keep it.

Pash stated that subsequent to the search of the Ledingham residence, Rebecca Ledingham asked Pash to store the gun cabinets in her garage. According to Pash, Rebecca Ledingham agreed to sell the cabinets to Pash's son for $150.

ADDITIONAL FACTS ON REMAND FROM THE U. S. COURT OF APPEALS

Agent Davidson for the Bureau of Alcohol, Tobacco, Firearms and Explosives stated that Rebecca Ledingham brought a handwritten bill of sale dated October 21, 2005 signed by her at Ledinghams' instigation, denoting that she had sold eight firearms that had been at her house to Herbie Goldthorpe for $2,500. These firearms included a colt pistol, an Olympic AR-15, a Mossberg shotgun, a 12-gauge shotgun, a Remington Express 12-gauge shotgun, a 16-gauge shotgun, an SKS Norinko rifle, and a Ruger Mini-14 .223 caliber.

Davidson stated that a notice of forfeiture, dated April 12, 2006, of the firearms the ATF seized

during the search of his residence was sent to John Ledingham via certified mail. The certified receipt was signed by someone named Ledingham – the first name not being legible. The notice itself explains the process by which a claim for the firearms must be made on the "seized asset claim form" provided with the notification letter.

Davidson stated that Rebecca Gail Ledingham signed and filed the claim form, under penalty of perjury, on May 2, 2006, claiming ownership of the firearms. A letter from the ATF, addressed to Rebecca Ledingham and delivered to her on May 11, 2006, acknowledged her claim and provided her with the case number, seizure number and asset identification and contact information for future reference.

Davidson agreed that the grand jury never saw this form on which Rebecca Ledingham claimed that the guns had belonged to her grandparents and great grandparents, had sentimental value and had been kept under lock and key away from John Ledingham. Davidson also stated that there was never any ATF investigation into Rebecca Ledingham's claim that she had received the items from relatives.

Davidson stated that he never had a copy of the form or provided a copy of the form to anyone until recently requested to do so by the government.

REASONS FOR GRANTING CERTIORARI

1. THE UNITED STATES COURT OF APPEALS ERRED IN HOLDING THAT THE NONDISCLOSURE OF THE BATFE ASSET CLAIM FORM DID NOT UNDERMINE THE OUTCOME OF THE TRIAL.

Rebecca Ledingham stated that she filed a formal claim, through her attorney, with the Bureau of Tobacco, Alcohol and Firearms for ownership of the firearms removed from the Ledingham home during the execution of the search warrant. As required when making such a claim, Rebecca Ledingham took an oath that the firearms were hers. The government, however, did not disclose the existence of her formal claim of ownership of the firearms.

Under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), the government has a duty to provide the accused with evidence material to guilt or punishment. The government failed to disclose this favorable material evidence to Ledingham.

The effect of the Brady violation on Ledingham's prosecution is two-fold. First, Rebecca Ledingham stated that she filed a claim form with the Bureau of Tobacco, Alcohol and Firearms for the firearms. The non-disclosure of her claim was exculpatory evidence tending to prove that Ledingham never intended to have firearms in his possession.

Secondly, Rebecca Ledingham claimed that Ledingham, during a private marital communication, asked her to tell the investigators that the firearms were hers. The fact that Rebecca Ledingham went to an attorney's office to execute the claim form belies her assertion that she only told investigators the guns were hers at her husband's insistence. The Brady duty extends to impeachment evidence as well as to exculpatory evidence.

When asked about the form executed by Rebecca Ledingham, Officer Davidson stated that he was familiar with the seized asset claim form in general but he had no specific knowledge of Rebecca Ledingham's claim because it would have been handled by a separate division of his agency. Under Brady and its progeny, however, it does not matter whether the government passively or inadvertently fails to disclose such exculpatory evidence. "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 481 (1995).

Ledingham avers that the prosecution in this case, at the very least, knew of Rebecca Ledingham's oral representations that the guns were hers and upon inquiry of ATF, which was active in Ledingham's prosecution, would have access to Rebecca Ledingham's sworn asset claim form.

Under United States v. Bagley, 473 U.S. 667, a Brady error occurs if the Court determines that the favorable evidence is material. Besides materiality,

the court must also make several other findings: that a "reasonable probability" exists that the result of the prosecution would have been different had the evidence been disclosed, and that the favorable evidence could reasonably be shown to undermine confidence in the verdict. If the court makes these three findings, then constitutional error results when the government fails to disclose such favorable evidence. The question of whether an error has occurred does not hinge on whether "the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles v. Whitley, 514 U.S. 419 (1995).

The materiality of Rebecca Ledingham's seized asset claim has importance beyond showing who owned the seized firearms. Under the circumstances of this case where the trial court allowed her to testify regarding private marital communications, this undisclosed evidence could have been used to impeach her claim that Ledingham coerced her into telling investigating officers that the seized weapons were hers. Under Strickler v. Greene, 527 U.S. 263, 281-282, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) a component of a Brady prosecutorial misconduct claim is the evidence must be favorable to the accused **either** because it is exculpatory **or** because it is impeaching. Under Strickler, when such favorable evidence is undisclosed, even if inadvertently, and prejudice ensues, a Brady violation occurs.

Rebecca Ledingham's testimony alleging that she was not the owner of the firearms, that Ledingham was the owner of the firearms, and that Ledingham told her privately to claim the firearms as her own was a substantial part of the government's case against Ledingham. Disclosure of the seized asset claim form would have weakened the government's case and strengthened Ledingham's defense that the firearms were not his and that Rebecca Ledingham owned the guns, owned the gun safe (by her own admission) and knew (by her own admission) that she needed to keep them under lock and key for her son's protection and for Ledingham's protection from prosecution. Had the seized asset claim form been disclosed to the defense, the value of Rebecca Ledingham's testimony for the government would have been substantially weakened.

In the "Treatment of *Brady v. Maryland* Material in United States District and State Courts' Rules, Orders, and Policies," Report to the Advisory Committee on Criminal Rules of the Judicial Conference of the United States, "Treatment of *Brady v. Maryland* Material in United States District and State Courts' Rules, Orders, and Policies," Laural L. Hooper, *et al.*, Federal Judicial Center, October, 2004, it is noted that the governing rules and policies for treatment of Brady material varies among the district courts. It is noted that a comprehensive review of all practices regarding Brady is beyond the level of resources available for the report. No specific remedies for prosecutorial nondisclosure are mandated in any district; however, sanctions, including exclusion of evidence, a finding

of contempt, the granting of a continuance and even the dismissal of an indictment could apply.

It is the contention of the defendant that more well-defined remedies need to be set forth by this Court to provide uniformity in the lower courts for failures to disclose Brady material.

In this case there is no serious issue concerning whether the ATF form was exculpatory or material. It was said to have been cumulative because the defense referenced the form at trial without producing the form, but a fair trial requires that the defendant possess the evidence itself and not a mere shadow of the evidence.

The jury should not be left to wonder whether the defendant's inability to produce the actual claim form means that there was something wrong with the actual form and, therefore, they should discount its existence. That fact that at trial, Rebecca Ledingham claimed that the form merely contained a statement of ownership while the actual form contained an explanation of her ownership which fit John Ledingham's assertions is important. This added detail, which could also be used for impeachment, may well have caused the jury to reach a different verdict. They may well have decided that this was a wife trying to gain advantage in a divorce action, just as John Ledingham claimed.

In fact, the additional information contained on the form when it was produced at the remand hearing in U.S. District Court, provided some further substantiation of the defendant's claim. The

remedy, not generally included in Rule 16 remedies, which needs to be applied here is the right to a new trial. Since the claim presented here by the defendant is a 5th and 14th amendment (U.S. CONST. amend. V and amend. XIV) claim based upon fair trial considerations, the Brady principles, at a minimum, require that no jury pass judgment on a defendant without having heard all exculpatory evidence which bears upon the fate of the defendant. Mr. Ledingham desires the simple remedy of a new trial.

2. THE UNITED STATES COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING LEDINGHAM'S WIFE TO TESTIFY AFTER LEDINGHAM HAD ASSERTED TESTIMONIAL PRIVILEGE.

The spousal testimonial privilege in federal court is governed by Fed. R. Evid. 501 which states that the applicability of a privilege "...shall be governed by the principles of common law as they may be interpreted by the courts of the United States in the light of reason and experience..." Intended to promote family integrity, the spousal privilege, has for centuries been rooted in the common law. U.S. v. Morris, 988 F.2d 1335 (4th Cir. 1993).

There are two types of marital privilege: privilege against adverse spousal testimony and privilege protecting confidential marital

communications. U.S. v. Parker, 834 F.2d 408 (4th Cir. 1987). In applying the Fed. R. Evid. 501 "reason and experience" standard to privilege against adverse spousal testimony, the courts have modified the rule such that the privilege vests with the testifying spouse who may neither be compelled to testify nor be foreclosed from testifying against the other. The testifying spouse no longer needs the consent of the non-testifying spouse to give testimony. This privilege is not implicated in this case because Rebecca Ledingham elected to testify against her husband.

The second type of spousal privilege, which protects confidential communications between husband and wife, has not been modified and is distinct from the other spousal testimonial privilege. This privilege is implicated in this case because Rebecca Ledingham testified to confidential marital communications she alleged took place between her and Ledingham. The Court has described this type of privilege as "the best solace of human existence." Trammel v. U.S., 445 U.S. 40, at 51, 100 S. Ct. 906, 63 L. Ed. 2d 186 (1980), (quoting) Stein v. Bowman, 38 U.S. (13 Pet.) 207, at 223, 10 L. Ed. 129 (1839). This privilege vests with the non-testifying spouse and survives the marital relationship. U.S. v. Acker, 52 F.3d 509 (1995). In its present form, the privilege dictates that "marital communications are presumptively confidential." Blau v. United States, 340 U.S. 332, 333, 71 S. Ct. 301, 302, 95 L. Ed. 306 (1951).

Accordingly, the party seeking to avoid the confidential communications privilege has the

burden of overriding this presumption by demonstrating either the presence of a third party at the time of the communication or the lack of intent that the communication be kept confidential. Pereira v. U.S., 347 U.S. 1, 6, 74 S. Ct. 358, 361, 98 L. Ed. 435 (1954). The courts no longer recognize marital privilege which prevents the government from enlisting one spouse to give information concerning the other or to aid in the other's apprehension, the courts recognize the spousal privilege protecting confidential marital communications. Spousal testimony in the courtroom regarding confidential marital communication is still prohibited. U.S. v. Burton, 631 F.2d 280 (1980), citing Trammel v. U.S., 445 U.S. 40, 52, 100 S. Ct. 906, 913, 63 L. Ed. 2d 186. (1980).

In the case at bar, Ledingham objected a number of times to allowing his wife to testify regarding statements she made to investigators about requests he allegedly privately made of her to claim as her own the firearms found during the search of the residence. Without this testimony, the government had no case against him. The government failed to demonstrate any rational basis for overriding the presumption against allowing private marital communications. The government simply told the Court Ledingham could not prevent his wife from testifying, and the Court, without requiring the government to present evidence to override the presumption, allowed the case to proceed on her testimony. The trial court clearly committed error in admitting Rebecca Ledingham's testimony about private marital communications.

The standard for ascertaining whether the error affected Ledingham's substantial rights is to examine the probability that the error "could have affected the verdict reached by the particular jury in the particular circumstances of the trial." U.S. v. Thompson, 716 F.2d 248 (4th Cir. 1983), quoting U.S. v. Davis, 657 F.2d 637, 640 (4th Cir. 1981). To make this determination, the Court may consider other evidence of a defendant's guilt, steps taken in mitigation of the error, and "the centrality of the issue affected by the error." U.S. v. Nyman, 649 F.2d 208, 211-212 (4th Cir. 1980).

Without Rebecca Ledingham's testimony alleging that Ledingham asked her to claim the guns as her own, there is credible evidence in the record that Ledingham did not personally own any of the firearms, that the firearms and ammunition were owned by others, including Rebecca Ledingham. There was also evidence that Rebecca Ledingham was given firearms and ammunition by third parties and that Rebecca Ledingham owned the locked gun cabinets. Pash stated that all of her dealings involving firearms and ammunition were with Rebecca. Wills stated that the materials, including gunpowder, found in the outbuilding were his for a project he was working on. It cannot be said that the evidence against Ledingham was so conclusive that the error in admitting Rebecca Ledingham's testimony about private, marital communications did not affect the jury's verdict. The Court erred in failing to shield the marital confidences between Ledingham and his wife.

CONCLUSION

By depriving Ledingham of exculpatory Brady material and his right to assert marital privilege, Ledingham was prejudiced in preparing his defense and in impeaching critical testimony of government witnesses at trial, thereby handicapping the jury in applying the law to the case. In allowing Rebecca Ledingham to testify despite the marital privilege claim, Ledingham was subjected to evidence at trial which improperly led to his conviction. This Court should grant certiorari and remand the case for a new trial.

Respectfully submitted,

JOHN LAWTON LEDINGHAM
Petitioner

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[ENTERED: August 7, 2009]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4928

UNITED STATES OF AMERICA

Plaintiff – Appellee,

v.

JOHN LAWTON LEDINGHAM

Defendant – Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Norman K. Moon, district Judge. (6:06-cr-00007 – nkm)

Submitted:
June 30, 2009

Decided:
August 7, 2009

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion

Joseph A. Sanzone, SANZONE & BAKER, P.C., Lynchburg, Virginia, for Appellant. Julia C. Dudley, United States Attorney, Jean B. Hudson, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted John Lawton Ledingham of possessing a firearm (Count 6) and ammunition (Count 7) after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1) (2006). He appeals his convictions, challenging the district court's evidentiary rulings and asserting that the Government violated Brady v. Maryland, 373 U.S. 83 (1963). Finding no reversible error, we affirm.

Ledingham argues that the district court erred in allowing the Government to cross-examine him regarding his prior convictions after he stipulated that he was a convicted felon. We review a district court's determination as to the scope of cross-examination for abuse of discretion. See United States v. Scheetz, 293 F. 3d 175, 194 (4th Cir. 2002); cf. United States v. Basham, 561 F. 3d 302,

325 (4th Cir. 2009) ("We review evidentiary rulings of the district court for abuse of discretion.").

In Old Chief v. United States, 519 U.S. 172 (1997), the Supreme Court held that, when a defendant stipulates to his felony status at the time of his alleged possession of a firearm in violation of § 922(g)(1), the Government is precluded from offering other evidence to prove the prior conviction. Id. at 191; see United States v. Williams, 461 F. 3d 441, 442-43 (4th Cir. 2006). The Government, however, did not offer any additional evidence on Ledingham's prior convictions in its case-in-chief. When the Government elicited testimony regarding Ledingham's other convictions on cross-examination, Ledingham already had testified to part of his criminal history. See Williams, 461 F. 3d at6 451 ("The fact that the jury already knew of [defendant's] felon status when it heard the name of his prior...convictions mitigates any damage that may have been caused by the introduction of those names.").

Turning to Ledingham's claim that the district court erred in admitting evidence of his prior convictions under Rule 609(a) of the Federal Rules of Evidence, Ledingham focuses on the district court's failure to conduct the required balancing test set forth in Rule 609(a)(1). See United States v. Gray, 852 F. 2d 136, 139 (4th Cir. 1988). Because he did not rely on this ground in the district court, this court's review is for plain error. United States v. Kemp, 546 F. 3d 759, 763 (6th Cir. 2008); see United States v. Olano, 507 U.S. 725, 732-36 (1993) (providing standard).

Assuming that the district court's failure to conduct the balancing test amounted to error that was plain, we find that such error did not affect Ledingham's substantial rights. The prior convictions included drug offenses and possession of stolen property, none of which were similar to the instant 8offense. Cr Untied States v. Saunders, 964 F. 2d 295, 297-98 (4th Cir. 1992) (finding evidence of similar prior convictions inadmissible under Rule 609(a)). Moreover, the district court gave the jury a cautionary instruction regarding the use of prior convictions. See Williams, 461 F. 3d at 451 ("We have held that [curative] instructions mitigate the possibility of prejudice from improperly admitted evidence of the defendant's criminal history because [w]e generally follow the presumption that the jury obeyed the limiting instructions of the district court."] 9internal quotation mark and citation omitted). We therefore find no abuse of discretion in the district court's evidentiary ruling.

Next, Ledingham contends that the district court erred by denying his motion for a mistrial after the Government cross-examined him a bout a prior conviction he did not commit. We review a district court's denial of a motion for a mistrial for an abuse of discretion and find none in light of the district court's limiting instructions to the jury. See United States v. Wallace, 515 F. 3d 327, 330 (4th Cir. 2008) (stating standard of review); Williams, 461 F. 3d at 451 (noting that this court presumes jury follows trial court's limiting instructions).

Ledingham also asserts on appeal that the Government violated Brady by failing to disclose a Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE") asset claim form, in which his wife stated that she owned the guns seized during the search of his home. Due process is violated if the evidence in question: (1) is favorable to the defendant because it is either exculpatory or impeaching; (2) was suppressed by the government either willfully or inadvertently; and (3) is material. Strickler v. Greene, 527 U.S. 263, 281-282 (1999). "[H]owever, where exculpatory information is not only available to the defendant but also lies in a source where a reasonable defendant would have looked, a defendant is not entitled to the benefit of the Brady doctrine." United States v. Jeffers, __ F. 3d __, __, 2009 WL 1678046, at *10 (4th Cir. June 17, 2009) (No. 06-5289) (internal quotation marks and citation omitted). Moreover, "there is no Brady violation if the defense is aware of the evidence in time to reasonably and effectively use it at trial." Id.

Although the original BATFE asset claim form could have been used to impeach Mrs. Ledingham's testimony that the guns belonged to Ledingham, we find that the nondisclosure of the form itself did not undermine the outcome of the trial. See Kyles v. Whitley, 514 U.S. 419, 433-434 (1995) (providing standard). Our review of the record on appeal leads us to conclude that Ledingham was aware of the information contained in the form before trial and could have taken reasonable measures to obtain a copy of the form from the BATFE. See Jeffers, 2009 WL 1678046, at *10. Thus, this claim fails.

Finally, Ledingham asserts that the district court erred by allowing his wife to testify after he asserted a marital communications testimonial privilege. WE review the trial court's resolution of the marital privilege issue of an abuse of discretion and find none. See United States v. Acker, 52 F. 3d 509, 515 (4th Cir. 1995) (stating standard of review). Because Ledingham and his wife jointly were involved during their marriage in ongoing criminal activity (i.e., conspiring to lie to federal officials on the BATFE asset claim form regarding the ownership of the firearms seized during the search of his home), he cannot rely on the marital communications privilege. United States v. Parker, 834 F. 2d 4087, 411 (4th Cir. 1987) (recognizing "that where marital communications have to do with the commission of a crime in which both spouses are participants, the conversation does not fall within the marital privilege" 0 (internal quotation marks and citation omitted).

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately resented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

[ENTERED: August 7, 2009]

Filed: August 7, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4928
(6:07-cr-00007-nkm)

UNITED STATES OF AMERICA

Plaintiff – Appellee,

v.

JOHN LAWTON LEDINGHAM

Defendant – Appellant.

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED: March 24, 2008]

FILED: March 24, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4928
(6:07-cr-00007-nkm)

UNITED STATES OF AMERICA

Plaintiff – Appellee,

v.

JOHN LAWTON LEDINGHAM

Defendant – Appellant.

O R D E R

The parties have filed a joint motion for remand for the limited purpose of further proceedings regarding defendant's motion for judgment of acquittal.

The Court grants the motion.

For the Court

/s/ PATRICIA S. CONNOR
Clerk

[ENTERED: October 17, 2008]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERHN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil No. 6:07-CR-00007

JOHN LAWTON LEDINGHAM,

Defendant.

MEMORANDUM OPINION AND ORDER

Judge Norman K. Moon

This matter is before the Court on remand from the United States Court of Appeals for the Fourth Circuit. The case was remanded upon a joint motion of the parties for the limited purposes of clarifying the record, introducing new evidence into the record, and allowing this Court to reconsider its previous ruling on defendant's motion for judgment of acquittal in light of the new evidence. (Docket n. 57, Ex. 1.) This Court held a hearing for these purposes on October 7, 2008.

I. BACKGROUND

On May 9, 2007, the defendant was found guilty of two counts of possession of a firearm by a prohibited person. *See* 18 U.S.C. § 922(g)(1). The defendant's first motion for acquittal was made in July 2007, almost two months after the conclusion of defendant's trial. (Docket n. 33.) The motion alleged that the government had failed to disclose material exculpatory evidence to the defense, in violation of the defendant's due process rights as set out in *Brady v. Maryland*, 373 U.S. 83 (1963). That evidence consisted of a property claim form filled out and signed by the defendant's wife, and filed with the Bureau of Alcohol, Tobacco and Firearms ("AFT"). In the form, the defendant's wife stated under oath that the firearms at issue in the case were hers. However, at trial, the defendant's wife testified that the same firearms belonged to the defendant. The defendant was not in possession of the form itself at the time it made its motion for acquittal, nor was the prosecutor or the ATF case agent. The Court heard evidence and denied the motion for acquittal at the sentencing hearing held on September 11, 2007.

II. STANDARD OF REVIEW

In every criminal case the prosecution must disclose to the defendant all "evidence . . .material either to guilt or to punishment." *Brady*, 373 U.S. at 87; *United States v. Ellis*, 121 F.3d 908, 914 (4th Cir. 1997). The government has a duty to disclose not only evidence that is in the prosecutor's possession, but also material exculpatory evidence that is

"known to others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 1567, 131 L. Ed. 2d 490 (1995). However, there is no "duty on the prosecutor's office to learn of information possessed by other government agencies that have no involvement in the investigation or prosecution at issue." *Horton v. United States*, 983 F. Supp. 650, 654 (E.D. Va. 1997) (quoting *United States v. Morris*, 80 F.3d 1151, 1169 (7th Cir. 1996), cert. denied, 519 U.S. 868 (1996)). Further, the prosecution has no duty to disclose evidence to the defendant "when defense counsel could have discovered the evidence through reasonable diligence." *United States v. Kelly*, 35 F.3d 929, 937 (4th Cir. 1994).

"Material" evidence means that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *United States v. Bagley*, 473 U.S. 667 682 (1985) (internal quotations omitted). In weighing the materiality of the undisclosed evidence, the key inquiry is whether the evidence is such that it undermines confidence in the verdict returned by the jury. *See Spicer v. Roxbury Correctional Institute*, 194, F.3d 547, 559 (4th Cir. 1999) ("Rather, the question is whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (internal quotations omitted)).

III. DISCUSSION

It is not disputed that the ATF was involved in the investigation and prosecution of the defendant. It is also not disputed that the claim form at issue was in the possession of the ATF. Testimony at the October 7, 2008 hearing established that an ATF claim form is automatically generated in every case in which property is seized. The form is generated by the Seized Property Branch of the ATF, and is triggered by the entry of data by the case agent. The form generally describes the property that was seized and allows the owner to make a claim to the ATF to recover the property. In this case, the defendant received the ATF claim form on April 12, 2006. The defendant's wife made a claim for the firearms and signed the form on May 2, 2006. The form contained a sworn statement by the defendant's wife that the firearms were hers, and provided a description of origi9n of several of them.[1] The ATF received the completed form on May 8, 2006.

The ATF claim form is exculpatory evidence, because it contains a sworn statement by the defendant's wife that the firearms were hers and not the defendant's. However, no *Brady* violation exists

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[1] Specifically, Mrs. Ledingham stated on the form that the firearms "are family property formerly owned by deceased Grandmother Kay Flanik." She then explained that the firearms are antiques and were originally owned by her grandfather and great-grandfather. She further stated that the firearms "are all extremely sentimental and were given to me as heirlooms to keep for the family. The guns were kept under lock and key at my exhusband's [sic] home. He had no access to them, as he has a felony conviction." (Docket no. 61 Ex. 4)

here because in light of the other evidence presented at trial, the ATF form does not constitute material evidence. At trial, Mrs. Ledingham described the statement she made on the ATF form, including the statement that the firearms were heirlooms, and testified that the statement she made on the ATF form was false. Mrs. Ledingham also testified that the defendant coerced here into claiming that the firearms were hers. The defendant disputed that testimony, and testified that while he knew she was filling out the ATF form, he did not know the substance of her statement.

The defendant argues that the specific information about the origin of the firearms included on the ATF form was material evidence, because if the defense had been able to investigate and confirm those statements, it would have discredited Mrs. Ledingham's trial testimony that the guns belonged to the defendant. This argument is not persuasive, because it is abundantly clear from various parts of the trial testimony that the defendant was well aware of the statement of the origin of the firearms prior to the trial. For example, during the cross examination of Agent Kincaid, defense counsel asked "[D]id you have any information that these weapons had come from Ms. Ledingham's grandparents?" (Trial Tr. At 37.) The defendant himself testified that the firearms had come "FROM MY WIFE'S GRANDMOTHER'S HOUSE. . . .My wife said she had found some three while going through her belongings after she passed on." (Trial Tr. At 118). He also testified that a specific shotgun piece had been acquired by Mrs. Ledingham "from her grandmother's littered-up basement." (Trial Tr. At

135). In addition, Mrs. Ledingham testified during trial that on the ATF form, she stated that the firearms were heirlooms. While the defense suggested that the jury would have been more persuaded of the veracity of the form if they had been allowed to see it, there is no reason to think that the physical presence of the form would have swayed the jury to disbelieve Mrs. Ledingham's trial testimony. Moreover, the defendant did not present any evidence to suggest that he would have been able to confirm as true the statement on the ATF form.

The defendant also argues that the form itself is material because it impeaches Mrs. Ledingham's grand jury testimony. Before the grand jury, Mrs. Ledingham testified that she separated from the defendant in February 2006. However, after the ATF received the claim form in May 2006, it sent a letter with a claim number addressed to Mrs. Ledingham at the defendant's address. The defendant argues that this indicates her testimony to the grand jury about the date she moved out of defendant's residence was false. However, Mrs. Ledingham's grand jury testimony indicates that, while she did leave the residence in February 2006, she moved out slowly, over time. It is not necessarily inconsistent that she would have continued to receive mail at the defendant's residence. Even if the ATF claim form does indicate an inconsistency, it is not likely of such a magnitude that it would cause a jury to dismiss her entire testimony at trial.

IV. CONCLUSION

In conclusion, the ATF claim form does not constitute material exculpatory evidence. In light of the amount of evidence presented against the defendant at trial, and the fact that the defendant knew the substance of the statement on the ATF claim form prior to trial, there is no indication that, but for the non-disclosure of the claim form, the result at trial would have been any different.

Accordingly, upon reconsideration of defendant's motion for acquittal, and in light of the additional evidence presented, the Court AFFIRMS its earlier ruling denying the defendant's motion.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED: This 17th Day of October, 2008.

/s/ Norman K. Moon
NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

[ENTERED: September 12, 2007]

UNITED STATES DISTRICT COURT

Western District of Virginia

UNITED STAETS OF AMERICA

V.

JOHN LAWTON LEDINGHAM

JUDGMENT IN A CRIMINAL CASE

Case Number DVAW607CR0000-07-001

USM Number 12544-84

Joseph Sanzone
Defendant's Attorney

THE DEFENDANT:

___ pleaded guilty to count(s) _____

___ pleaded nolo contendere to count(s) _____

X___was found guilty on count(s) 6 and 7 after a plea of not guilty,

The defendant is adjudicated guilty of these offenses:

Title & Section: 18 U.S.C. Section 922(g)(1) & 924(a)(2)

Nature of Offense: Possession of a Firearm by a Convicted Felon

Date Offense Concluded: 3/10/2006

Count Number(s): 6

Title & Section: 18 U.S.C. Section 922(g)(1) & 924(a)(2)

Nature of Offense: Possession of Ammunition by a Convicted Felon

Date Offense Concluded: 3/10/2006

Count Number(s): 7

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

___ The defendant has been found guilty on count(s) _____

X 1, 2, 3, 4, & 5 ___ is X are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States attorney of material changes in economic circumstances.

September 11, 2007
Date of Imposition of Judgment

/s/ Norman K. Moon
Signature of Judge

Norman K. Moon, United States District Judge
Name and Title of Judge

Sept. 12, 2007
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 21 months (21 months as to Count 6 and 21 months as to Count 7 – to run concurrently).

___ The court makes the following recommendations to the Bureau of Prisons:

___ The defendant is remanded to the custody of the United States Marshall.

___ The defendant shall surrender to the United States Marshal for this district:

___ at _____ ___ a.m. ___ p.m. on _____

___ as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

___ before _____ on _____

X as notified by the United States Marshal,

___ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ____ to _____ a _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 2 years (2 years as to Count 6 and 2 years as to Count 7 – to run concurrently)

MANDATORY CONDITIONS OF SUPERVISION

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

___ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X_ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

___ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

___ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet on this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or c characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPEC1AL CONDITIONS OF SUPERV1S1ON

1) The defendant shall pay any special assessment and fine that is imposed by this judgment.

2) Must participate in a program of testing and treatment for substance abuse as directed by the probation officer, until such time as defendant is released from the program by the officer.

3) The defendant shall reside in a residence free of firearms, ammunition, destructive devices, and dangerous weapons

4) The defendant shall submit to warrantless search and seizure of person and property by the probation officer, to determine whether the defendant is in possession of firearms and illegal controlled substances.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
Totals:	$200.00	$500.00	$

___ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case* (AO245C) will be entered after such determination.

___ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$0.00	$0.00	

___ Restitution amount ordered pursuant to plea agreement $ _____

___ The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

___ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:.

_____ The interest requirement is waived for the __ fine ___ restitution.

____ The interest requirement for the __ fine __restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 13, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. __X__ Lump sum payment of $ 700.00* due immediately, balance payable
____ not later than _____, or
____ in accordance with ___C, ___ D, ___ E, ___F or,___ G below; or

B. ___ Payment to begin immediately (may be combined with ___ C, ___ D, ___ F, or ___G below; or

C. _____ Payment in equal__(e.g. weekly, quarterly) installments of $ 25.00
over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or

D. ___ Payment in equal __ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E. ___ Payment during the term of supervised release will commence within ___ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time, or

F. ___ During the term of imprisonment, payment in equal ___ (e.g. weekly, monthly, quarterly)

installments of $__ or __% of the defendant's income, whichever is greater, to commence ___(e.g., 30 or 60 days) after the date of this judgment; AND payment in equal ___ (e.g. weekly, monthly, quarterly) installments of $ ___ during the term of supervised release, to commence ___ (e.g. 30 or 60 days after release from imprisonment.

G. _____ Special instructions regarding the payment of criminal monetary penalties:

*Special Assessment of $200.00 and Fine of $500.00 ($250 as to each count) – due immediately.

Any installment schedule shall not preclude enforcement of the restitution or fine order by the United States under 18 U.S.C. §§ 3613 and 3664(m).. Any installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and the defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

All criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, P.O. Box 1234, Roanoke, Virginia 24006, for disbursement.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

___ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

___ The defendant shall pay the cost of prosecution.

___ The defendant shall pay the following court cost(s):

___ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.